IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

Crl.MC.No. 1831 of 2007()

CRRP.3/2006 of I ADDL. SESSIONS COURT, PALAKKAD
CMP.7824/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

.....

PETITIONER:

VILAS KUMAR, S/O. SANTHOSH CHAND JAIN,
AGED 37 YEARS, 345-N.M.JOSHI MARG, JAIN CHOWL,
MUMBAI - 400 011.

BY ADV. SRI.P.A.ABDUL JABBAR

RESPONDENTS:

---

1. STATE OF KERALA,
REPRESENTED BY PUBLLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. CIRCLE INSPECTOR OF POLICE,
OTTAPPALAM POLICE STATION, PALAKKAD.

BY P.P. SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1831 OF 2007

Dated this the 15th day of June, 2007

ORDER

The petitioner is the de facto complainant and the allegation is that the offence of theft has been committed against him. The articles thieved are 3.5 Kgs. of finished gold ornaments. In the course of investigation, gold ingot weighing 1.926 Kgs. which was allegedly obtained by conversion of the gold ornaments thieved was seized by the police. The petitioner applied for release of the ornaments. There was no other claimant whatsoever. The learned Magistrate by the impugned order rejected the said prayer on the plea that the identify of the gold ingot, as one obtained by conversion of the gold ornaments thieved, will have to be established in the course of trial. The petitioner unsuccessfully attempted to challenge the order in revision. It is, in these circumstances, that the petitioner has come before this Court.

2. The learned counsel for the petitioner prays and the learned Public Prosecutor does not seriously oppose the said prayer that the gold ingot may now be released to the petitioner inasmuch as there is no other claimant. I find merit in that prayer. The decision in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638) clearly shows that the courts must show anxiety not to unnecessary retain the articles belonging to parties in court. I am satisfied, subject to appropriate conditions and safeguards which must be imposed by the learned Magistrate, the gold ingot can be released to the petitioner. The learned Magistrate shall insist that photographs of the gold ingot are taken and kept in court for future reference as indicated in the above precedent. Appropriate conditions shall be imposed by the learned Magistrate. The impugned orders are set aside and this Crl.M.C. is allowed to the above extent.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy// **P.S. To Judge**